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No. 236

Supreme Court of the United States

October Term 1949

RICHARD MORFORD, *Petitioner,*

vs.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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PETITIONER'S REPLY TO MEMORANDUM OF RESPONDENT IN OPPOSITION TO PETITION

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The opposition of the respondent to the petition for a writ of certiorari clearly demonstrates the need for granting the writ.

1. The government rejects the contention of the petitioner and the doctrine of the court below, that before the Committee may demand the production of the financial and membership records of an organization, it must first appear that the propaganda of the organization comes within the resolution establishing the Committee. It adopts, instead, the viewpoint of the Committee that the

Committee is empowered to demand the financial and membership records of any organization, regardless of the nature of its propaganda, in order to determine from such records whether the organization falls within its jurisdiction.[1] In support of it position the government cites the opinion of the Court of Appeals for the District of Columbia in *Marshall v. United States* (pp. 7-8), and interprets that opinion in a manner that is squarely in conflict with the opinion of the same court in the present case.

2. Nowhere in its opposition does the government come to grips with the issue of pertinence, which is, briefly stated: what propaganda of the Council brings it within the jurisdiction of the Committee? Indeed, the opposition does not even discuss the resolution which defines the Committee's authority. Instead, it suggests to this Court as a basis for the Committee's jurisdiction that the Committee had "reasonable cause for concern," and that the "Committee's power of inquiry, anticipating all possible cases, was very broad" (p. 11).

The use of such vague language and meaningless concepts in the face of a specific inquiry as to pertinency, indicates only that the government's position, like the Committee's, is that the Committee may investigate anything it wishes. The gist of the government's position is that the records of the Council were pertinent to the Committee's jurisdiction solely because the Committee demanded them.

But this position of the government and the Committee raises serious questions for this Court. (1) Has Congress

[1] The government's opposition refers to the petitioner's use of "isolated excerpts from the Committee's proceedings" (p. 9, n. 2). The quotations in the petition at pp. 15-18 are not "isolated excerpts." On the contrary, the petition sets forth all of the statements of the Committee, its members and the Committee staff, that indicate the Committee's views as to jurisdiction in the matter.

in the resolution establishing the House Committee on Un-American Activities authorized the Committee to investigate anything it pleases? (2) Does Congress have the constitutional power to take such action?

3. Although the government does not discuss the resolution establishing the Committee, or the manner, if any, in which the Council's propaganda falls within the jurisdiction of the Committee, the government does discuss the irrelevant question as to whether the Council's propaganda is critical of the government's foreign policy. Where the Court below made the sweeping statement without basis that the Council's propaganda was "consistently critical of our foreign policy," the government's opposition indicates that this propaganda was occasionally critical. Ignoring a good part of the Council's propaganda from 1943 on, the government has carefully selected examples of statements which it considered critical. Even in these few examples, the government finds it necessary to identify our foreign policy with the views of Senator Vandenberg and General Patton. Thus the Council's approval of the government's dismissal of Patton because of his opposition to official denazification policy is considered by the government to be critical of our foreign policy! And the government failed to note that the same issue of the periodical which approved our government's dismissal of Patton also praised statements of Generals Eisenhower and Clay (Reporter, Oct. 15, 1945, at p. 4).

The plain truth that emerges from a reading of the entire record and not isolated portions, is that the Council's propaganda consistently promoted the idea of friendship between the United States and the Soviet Union. Where government officials expressed support of this idea, as many of them did in 1943, 1944 and 1945, the Council used and endorsed these statements. Where government officials were critical of this idea, the Council was critical of their statements. To the Committee, of course, the idea

of American-Soviet friendship was anathema regardless of who expressed it, whether it was the Council or a government official. Thus a member of the Committee's staff sharply criticized a booklet issued by the Council in 1944 because it contained and approved such a statement made by Sumner Welles (R. 278).

All of this indicates a difference of opinion as to our correct foreign policy between the Council and the Committee. On such occasions as the government shared the foreign policy views of the Committee, there was a difference of opinion between the Council and the government. But neither the court below nor the government has in any way indicated what all this has to do with the resolution defining the Committee's jurisdiction. Nothing in that resolution authorizes the Committee to investigate organizations which differ with it or the government as to foreign policy.

4. The government concedes that the jury issue raised in the petition is the same as that presented in *Dennis v. United States*, No. 14 of this term, certiorari granted June 27, 1949. Such a concession should require the granting of the writ of certiorari in this case so that the petitioner may have the opportunity to brief and argue his case.

5. The government urges upon this Court the view that even though the petitioner was convicted of a crime of which he was not guilty under the doctrine of this Court, the conviction should nevertheless be sustained because of the failure of the petitioner to raise the quorum issue at the trial. We are confident that this Court will not permit a miscarriage of justice on this technical ground.

Respectfully submitted,

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